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HUMAN RIGHTS, LAW AND THE  
LITERATURE OF THE OPPRESSED

Volume 1 (Seminars 1-6)

Prof. Craig Scott,  
Faculty of Law,  
University of Toronto

June 1991

Materials prepared for a course given in July and August of 1991 at Deep Springs College, California, U.S.A., by Daniel Porterfield and Craig Scott.

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FACULTY OF LAW  
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HUMAN RIGHTS, LAW AND LITERATURE OF THE OPPRESSED

VOLUME 1 (SEMINARS 1-6)

Note: This Table of Contents also constitutes the Syllabus for the first 9 Classes of the course at Deep Springs College, July-August 1991. Students will not be expected to read all of the material. Specific 'mandatory' readings will be indicated prior to each class and students encouraged to read further according to their own interests for purposes of the assignments. The references to Kymlicka, Liberalism, Community and Culture are to a book which you are asked to purchase separately.

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CLASS #1:           INTERNATIONAL HUMAN RIGHTS AND U.S. CONSTITUTIONAL RIGHTS

International Human Rights: Please Read Before the First Class

Bu. H.W., "Human Rights", (1985) 20 Encyclopedia Britannica 713-721 1:1

Jack Donnelly, Universal Human Rights in Theory and Practice (Ithaca: Cornell University Press, 1989), Ch.1, "The Concept of Human Rights", 9-27 1:10

Donnelly, Ch.2, "The Interdependence and Indivisibility of Human Rights", 28-45 1:20

U.S. Constitutional Rights: To Be Read During the First Class - Do Not Read Beforehand

W. Haywood Burns, "Law and Race in Early America" in David Kairys, ed., The Politics of Law: A Progressive Critique (New York: Pantheon Books, 1990) 115-120 1:29

Brown v Board of Education 347 US 483 (1954) 1:32

Nadine Taub and Elizabeth M. Schneider, "Women's Subordination and the Role of Law - The Legal Order and the Public/Private Split" in Kairys, 151-157 1:40

Roe v Wade 410 US 113 (1973) in Stone, Seidman, Sunstein and Tushnet, Constitutional Law @ 854 1:44

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**CLASS #2:            U.S.. CONSTITUTIONAL LAW [continued]: EXPANDING  
AND CONTRACTING RIGHTS**

<u>The Constitution of the United States</u> reproduced in Geoffrey Stone, Louis Seidman, Cass Sunstein and Mark Tushnet, <u>Constitutional Law</u> (Toronto: Little, Brown and Company, 1986) @ xxxix	1:52
Stone, Seidman, Sunstein and Tushnet, "Note: Justifications and Explanations for <u>Brown</u> " in <u>Constitutional Law</u> @ 463-467	1:60
<u>Brown v Board of Education (Brown II)</u> 349 US 294 (1955) in Stone, Seidman, Sunstein and Tushnet, <u>Constitutional Law</u> @ 467-468	1:64
Stone, Seidman, Sunstein and Tushnet, "Note: 'All Deliberate Speed'" in <u>Constitutional Law</u> @ 468-470	1:65
Stone, Seidman, Sunstein and Tushnet, "Southern Desegregation - Note: The Response to Brown" in <u>Constitutional Law</u> @ 470-475	1:67
Alan Freeman, "Antidiscrimination Law: The View From 1989 - " in David Kairys, ed., <u>The Politics of Law: A Progressive Critique</u> (New York: Pantheon Books, 1990) 120, 126-150	1:73
Morton Horwitz, "The Jurisprudence of <u>Brown</u> and the Dilemmas of Liberalism" (1979) 14 Harvard Civil Rights - Civil Liberties Law Review 600	1:84
Robert Carter, "Reexamining <u>Brown</u> Twenty-Five Years Later: Looking Backward Into the Future" (1979) 14 Harvard Civil Rights - Civil Liberties Law Review 615	1:92
<u>Maher v Roe</u> 432 US 464 (1977) in Stone, Seidman, Sunstein and Tushnet, <u>Constitutional Law</u> @ 869-871	1:98
<u>Harris v McRae</u> 448 US 297 (1980) in Stone, Seidman, Sunstein and Tushnet, <u>Constitutional Law</u> @ 872-873	1:101
Stone, Seidman, Sunstein and Tushnet, "Note: The Abortion Funding Cases" in <u>Constitutional Law</u> @ 873-874	1:102



Nadine Taub and Elizabeth M. Schneider [continued],  
"Women's Subordination and the Role of Law -  
Legal Controls on Reproduction and the Public/Private  
Split" in Kairys, 157-160 1:103

Associated Press, "Counselling abortions still  
banned" (May 29, 1991) The Globe and Mail A12 1:105

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**CLASS #3:            UNIVERSAL HUMAN RIGHTS AND CULTURAL RELATIVISM  
DEBATES**

Executive Board, American Anthropological Association,  
"Statement on Human Rights" (1947) 49 American  
Anthropologist 539-543 1:106

Universal Declaration of Human Rights in United  
Nations, Human Rights: A Compilation of International  
Instruments (New York: United Nations, 1983) 1 1:109

Philip Alston, "The Universal Declaration at 35:  
Western and Passe or Alive and Universal?"  
(1983) 31 Int.Comm. of Jurists Review 60 1:112

Alisdair MacIntyre, "Some Consequences of the Failure  
of the Enlightenment Project" in After Virtue  
(London: Duckworth, 1981) 64-68 1:118

Michael Ignatieff, The Needs of Strangers (London:  
Chatto & Windus, 1984), Ch.1, "The Natural and  
the Social", 27-47 1:121

Michael Ignatieff, The Needs of Strangers (London:  
Chatto & Windus, 1984), Ch.1, "The Natural and  
the Social", 48-53 1:133

Jack Donnelly, Universal Human Rights in Theory and  
Practice, Ch.6, "Cultural Relativism and Universal  
Human Rights" and Ch.7, "Human Rights and Cultural  
Values: Caste in India" 1:135

R. J. Vincent, Human Rights and International Relations  
(Cambridge, Eng.: Cambridge Univ. Press, 1986), Ch. 3,  
"Human Rights and Cultural Relativism", 37-57 1:153

Abdullahi Ahmed An-Na'im, Toward an Islamic Reformation:  
Civil Liberties, Human Rights and International Law  
(Syracuse: Syracuse Univ. Press, 1990), Ch.7,  
"Shari'a and Basic Human Rights", 137-160,  
and "Conclusion", 182-187 1:164

Abdullahi Ahmed An-Na'im, "Towards a Cross-Cultural Approach to Defining International Standards of Human Rights: The Meaning of Cruel, Inhuman or Degrading Treatment or Punishment" (Work in progress; Preliminary Draft of a Paper Presented to the International Conference on Human Rights in Cross-Cultural Perspective, Saskatoon, Saskatchewan, Oct.12-14, 1989) 1:178

William Alford, "Making a Goddess from Loose Sand: Thoughts on Human Rights in China" (Work in progress; Preliminary Draft of a Paper Presented to the International Conference on Human Rights in Cross-Cultural Perspective, Saskatoon, Saskatchewan, Oct.12-14, 1989) 1:195

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**CLASS #4:            PHILOSOPHICAL DEBATES OVER THE NATURE OF THE SELF AND IDENTITY**

Will Kymlicka, Liberalism, Community and Culture, (Oxford: Clarendon Press, 1991), Ch.1, "Introduction" bk:1-5

Kymlicka, Ch.2, "Liberalism" bk:9-20

Kymlicka, Ch.4, "Communitarianism and the Self" bk:47-73

Kymlicka, Ch.5, "Taylor's Social Thesis" bk:74-99

Martha Minow, "Identities" (1991) 3 Yale Journal of Law and the Humanities 97-130 1:209

Richard Rorty, Contingency, irony and solidarity (Cambridge, England: Cambridge University Press, 1989), Ch.2, "The contingency of selfhood" and Ch.3, "The contingency of a liberal community" 1:227

Barbara Herrnstein-Smith, Contingencies of Value: Alternative Perspectives for Critical Theory (Cambridge, Mass.: Harvard University Press, 1988) "Critical Problematics", 9-16; "Contingency and Interdependence", 30-36; "Matters of Taste", 36-42 1:251

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**CLASS #5:            THE VALUE AND SCOPE OF COMMUNITY AND CULTURAL MEMBERSHIP**

Rorty, Ch.9, "Solidarity", 189-199 1:263



Herrnstein-Smith, "Judgment Typology and MacIntyre's Fall", 85-94; "Quietism and the Active Relativist", 156-166; "Community, Solidarity and the Pragmatist's Dilemma", 166-173; "Politics and Justification", 173-179; "Conceptual Tastes and Practical Consequences", 180-184 1:269

Kymlicka, Ch.7, "Liberalism in Culturally Plural Societies" bk:135-161

Kymlicka, Ch.8, "The Value of Cultural Membership" bk:162-181

Nitya Duclos, "Lessons of Difference: Feminist Theory on Cultural Diversity" (1990) 38 Buffalo Law Review 325 1:290

Sandra Lovelace v Canada, Comm. No. 24/1977, in United Nations, Human Rights Committee: Selected Decisions under the Optional Protocol (2nd to 16th sessions) (View of July 30, 1981) (New York: United Nations, 1985) 1:308

International Covenant on Civil and Political Rights in United Nations, Human Rights: A Compilation of International Instruments (New York: United Nations, 1983) 8 1:313

Optional Protocol to the International Covenant on Civil and Political Rights in UN, HR, 16 1:321

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**CLASS #6:            RIGHTS TO CULTURE AND RIGHTS OF COLLECTIVITIES**

Kymlicka, Ch.9, "Equality for Minority Cultures", 135-161

Kymlicka, Ch.10, "Minority Rights and the Liberal Tradition", 206-219

Kymlicka, Ch.11, "Walzer and Minority Rights", 220-236

Kymlicka, Ch.12, "Communitarianism and Minority Rights", 237-244

Kymlicka, Ch.13, "Apartheid in South Africa", 245-252

Kymlicka, Ch.14, "Conclusion", 253-258

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The remaining seminars 7-9 are as set out below. The materials for these seminars are in VOLUME 2.

**CLASS #7:            RIGHTS, DIFFERENCE, STORYTELLING AND THE LAW**

Mark Tushnet, "An Essay on Rights" (1984) 62 Texas Law Review 1363

Michael Perry, "Taking Neither Rights-Talk nor the 'Critique of Rights' Too Seriously" (1984) 62 Texas Law Review 1405

Martha Minow, Making All the Difference: Inclusion, Exclusion and American Law (Ithaca: Cornell University Press, 1990) 164-172, 277-311

Richard Delgado, "Storytelling for Oppositionists and Others: A Plea for Narrative" (1989) 87 Michigan Law Review 2411, 2411-2415, 2435-2441

Robert A. Williams, Jr., "Taking Rights Aggressively: The Perils and Promise of Critical Legal Theory for Peoples of Color" (1987) 5 Law and Inequality 103

Patricia Williams, "Alchemical Notes: Reconstructing Ideals from Deconstructed Rights" (1987) 22 Harvard Civil Rights - Civil Liberties Law Review 401

Carrie Menkel-Meadow, "Excluded Voices: New Voices in the Legal Profession Making New Voices in the Law" (1987) 42 Univ. of Miami Law Review 29

Mari Matsuda, "Looking to the Bottom: Critical Legal Studies and Reparations" (1987) 22 Harvard Civil Rights - Civil Liberties Law Review 323

Morton Horwitz, "Rights" (1988) 23 Harvard Civil Rights - Civil Liberties Law Review 393

Richard Delgado, "When a Story is Just a Story: Does Voice Really Matter?" (1990) 76 Virginia Law Review 95

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**CLASS #8:            DISCOVERING OTHERS:    RIGHTS AND ABORIGINAL PEOPLES**

Kevin J. Worthen, "Sword or Shield: The Past and Future Impact of Western Legal Thought on American Indian Sovereignty" [Book Review of The American Indian in Western Legal Thought: The Discourses of Conquest. By Robert A. Williams, Jr. Oxford University Press. 1990. Pp.352. \$39.95.]

Johnson v M'Intosh, 21 U.S. (8 Wheat) 543 (1823)

Robert A. Williams, Jr., "Encounters on the Frontiers of International Human Rights Law: Redefining the Terms of Indigenous Peoples' Survival in the World" (1990) Duke Law Journal 660

Roxanne Dunbar Ortiz, "Cultural Legitimacy of Human Rights in Latin American Indigenous Perspectives", Paper Prepared for the International Conference on Human Rights in Cross-Cultural Perspective, Saskatoon, Saskatchewan, Oct.12-14, 1989

Revised Draft Universal Declaration on Rights of Indigenous Peoples [1989] 4 Canadian Native Law Reporter 44

"Gitksan-Wet' Suwet'En Land Title Action: Editor's Note and Introduction" [1988] 1 Canadian Native Law Reporter 14-16

"The Address of the Gitksan-Wet' Suwet'En Hereditary Chiefs to Chief Justice McEachren of the Supreme Court of British Columbia" [1988] 1 Canadian Native Law Reporter 17ff.

Michael Bliss, "Conducted Tour" (April/May 1989) 69:2 The Beaver 16

M. Carneiro da Cunha, "Human Rights or Collective Rights? Brazilian Indians' and Anthropologists' Perspective", Paper Presented to the International Conference on Human Rights in Cross-Cultural Perspective, Saskatoon, Saskatchewan, Oct.12-14, 1989

William Connolly, "Identity and Difference in Global Politics" in J. Der Derian and M.J. Shapiro, eds., International/Intertextual Relations: Postmodern Readings of World Politics (Toronto: Lexington Books, 1989) 323

Garry Wills, "Goodbye, Columbus" (Nov.22, 1990) New York Review of Books 6

Mario Vargas Llosa, "Questions of Conquest: What Columbus Wrought, and what he did not" (Dec. 1990) Harper's Magazine 45

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**CLASS #9:**            **REVISITING RIGHTS IN THE U.S.:    HOW FAR DOES OUR  
WORLD EXTEND?**

**Human Rights, Universality and the U.S.**

Daniel Bodansky, "Human Rights and Universal Jurisdiction" in Mark Gibney, ed., World Justice? U.S. Courts and International Human Rights (Boulder: Westview Press, 1991) 1

Kenneth Randall, Federal Courts and the International Human Rights Paradigm (Durham, N.C.: Duke University Press, 1990), Ch.9, "The



Human Rights Paradigm", 194-210, and Ch. 10, "Conclusion", 211-212

Filartiga v Pena-Irala, 630 F.2d 876 (2nd Cir. 1980) excerpted in Frank Newman and David Weissbrodt, International Human Rights (Cincinnati: Anderson Publishing, 1990) @ 597

Filartiga v Pena-Irala, 577 F. Supp. 860 (E.D. N.Y. 1984) (on remand) excerpted in Newman and Weissbrodt, @ 651

The Baby Boy Opinion, Case 2141, Inter-American Commission on Human Rights 25, PEA. Ser. L/V/II.54, doc. 9 rev. 1 (1981) excerpted in Newman and Weissbrodt, 260

Anthony D'Amato, "The Invasion of Panama Was a Lawful Response to Tyranny" (1990) 84 AJIL 516

### International Human Rights and the Stories of the Poor

Bert Lockwood, "Toward the Economic Brown: Economic Rights in the United States and the Possible Contribution of International Human Rights Law" in Gibney, 149

Stone, Seidman, Sunstein and Tushnet, "Welfare" in Constitutional Law @ 815-817

Dandridge v Williams 397 US 471 (1970) in Stone, Seidman, Sunstein and Tushnet, Constitutional Law @ 818-821

San Antonio Independent School District v Rodriguez (1973) 411 US 1 in Stone, Seidman, Sunstein and Tushnet, Constitutional Law @ 821-830

Stone, Seidman, Sunstein and Tushnet, "Note: the Rodriguez Reformulation" in Constitutional Law @ 830-831

Plyler v Doe 457 US 202 (1982) in Stone, Seidman, Sunstein and Tushnet, Constitutional Law @ 831-838

Stone, Seidman, Sunstein and Tushnet, "Note: 'Fundamental Interests' and the Equal Protection Clause - A New Direction" in Constitutional Law @ 839-840

International Covenant on Economic, Social and Cultural Rights in UN, HR, 3

Phillip Alston, "U.S. Ratification of the Covenant on Economic, Social and Cultural Rights: The Need for an Entirely New Strategy" (1990) 84 AJIL 365

William Brennan, Jr., "Reason, Passion and the 'Progress of the Law'" (1988) 10 Cardozo Law Review 3 @ 8-11, 19-23